

posals of the General Assembly must be subject to veto of the governor.

Here we really are taking a halfway measure, saying that the Court of Appeals shall have power, but that that power shall be shared also by the legislative branch. I would submit to Judge Henderson that it is much easier to get such men to go into a room to overturn a decision of 160 or 180 members of the General Assembly than it is to get that group to go and overturn a rule of the Court of Appeals.

I think we have to be concerned about overloading power in one branch of the government. I would hope this amendment would be approved by this group.

THE CHAIRMAN: Does any delegate desire to speak in opposition to the amendment?

Delegate Willoner, do you desire to speak in favor of the amendment?

DELEGATE WILLONER: Yes, Mr. Chairman. I really did not think this was the time to speak on this question, but Delegate Dukes is trying to make it a question of judicial administration. I do not think it is a question of judicial administration. Certainly, it is unlikely that the legislature would ever get into this area. The principle that is involved here, it seems to me, is the most serious principle. It is a question every delegate is going to have to reach before discussion of this issue is over, that is, whether or not we are going to delegate legislative power to the courts.

To me this is a very serious proposition. While our present Constitution has concurrently delegated this power, in this particular article we are delegating power far beyond what is ordinarily considered an appropriate delegation of power to a judicial branch. It seems to me that a stand must be taken here, although it would be more likely to be taken at the last article when we get to the rule-making power, that the court shall not have power that cannot be checked by the very people who are giving them that power; and what we would be doing is delegating forever the power of the people to have any say in the administration of their courts.

While, as I say, this is unlikely to happen in this particular area, if they were ever to want this power, we would have absolutely nothing to say about it. This is a horrible principle. I think it is a principle that we have to stand up and be counted on. It is unfortunate it comes on

an issue which is really not a question that the legislature will really get into. It is the principle that is involved.

I think we should support this amendment.

THE CHAIRMAN: Delegate Marvin Smith, do you desire to speak in opposition?

DELEGATE M. SMITH: I desire to speak in opposition to the amendment, yes, sir.

THE CHAIRMAN: You may proceed.

DELEGATE M. SMITH: May I suggest to you, Mr. Chairman, that what we are really and truly talking about here is letting the courts administer the courts. Now, the power does reside in the people. The power resides in the people, and if that power of administration is abused, the people have the power to amend this constitution.

I submit to you, sir, that the people who have responsibility here with reference to this rule-making power overlook the procedures that have heretofore been used insofar as that rule-making power is concerned.

Now, you, Mr. Chairman, I think have been a member of the Rules Committee. I have never been a member of the Rules Committee of the Court of Appeals, but you know, sir, that the practice has been, when the Rules Committee was considering a draft of a rule, that it was published in the daily record; it was circulated. The bar and the public have been given an opportunity to be heard, and then it is only after that that the rule has gone to the court and has been adopted by the Court of Appeals.

THE CHAIRMAN: Does any other delegate desire to speak in favor?

Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President, Members of the Committee of the Whole:

I rise in favor of the amendment.

If we look at section 5.31, we find, as Delegate Henderson pointed out, that both the legislature and the court have a concurrent jurisdiction in rule making power, and that the last one to speak on the subject, is the rule to be applied. But also in section 5.31, it begins "except as to matters specifically provided by this Constitution."